IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21368 of 2006

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PAREKH PLATINUM LTD. - Petitioner(s)
Versus
DHAVALKUMAR MANILAL - Respondent(s)

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Appearance :
MR KISHOR M PAUL for Petitioner(s) : 1,
MR UT MISHRA for Respondent(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 19/03/2007

ORAL JUDGMENT

Heard the learned advocates.

The petitioner M/s.Parekh Platinum Limited – employer challenges the judgment and order dated 18th July, 2006 passed by the Appellate Authority under

the Payment of Gratuity Act, 1972 (hereinafter referred to as, **"the Act"**) in Gratuity Appeal No.39/2005.

By order dated 25th November, 1999 made by the petitioner, the respondent-workman was appointed as an Operator (Trainee). He joined the duty on 1st December, 1999. After serving for nearly five years, on 13th September, 2004 the respondent resigned from service. His resignation was accepted on 5th October, 2004 effective from 13th September, 2004.

As the respondent was not paid the gratuity, he filed Gratuity Application No.24/2005 before the Controlling Authority under the Act. Before the Controlling Authority, the respondent maintained that he was appointed on 1st April, 1999 and that he had resigned from service on 13th September, 2004; that he had completed five years' service. The said plea was supported by the respondent by his oral evidence. According to him, even prior to his appointment on 25th November, 1999 he was engaged by the petitioner

since 1st April, 1999. The respondent had thus completed more than five years' service under the petitioner. He was, therefore, entitled to the gratuity under the Act.

The Application was contested by the petitioner. According to the petitioner, the respondent was appointed on 25th November, 1999 and that he had joined service on 1st December, 1999. On the date he was relieved from service he had not completed five years' service. In absence of such service, he was not entitled to the benefit of gratuity under the Act. The said plea was supported by the documentary evidence viz. appointment order and joining report.

Except the bare statement made by the respondent, there is no evidence on record to suggest that the respondent had joined the service on 1st April, 1999 as alleged. Nevertheless, the Controlling Authority, by its judgment and order dated 29th August, 2005, held that the respondent was entitled

to gratuity in the sum of Rs.7,355=00. The said order has been confirmed by the Appellate Authority in the above referred Appeal.

Section 4 of the Act provides, inter alia, that **"the gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years."** In the present case, the evidence on record suggests that on the date of his resignation, the respondent had not rendered continuous service for not less than five years. The finding of fact to the contrary recorded by the Controlling Authority and confirmed by the Appellate Authority is not supported by evidence on record. As the respondent had not completed five years' continuous service, he was not entitled to the gratuity under the Act. Both the authorities below have erred in directing the petitioner to pay the gratuity to the respondent.

In above view of the matter, the petition is allowed. The impugned judgment and order dated 18th

July, 2006 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 in Gratuity Appeal No.39/2005 is quashed and set-aside. The Gratuity Application No.24/2005 filed by the respondent stands rejected. Rule is made absolute. The parties shall bear their own cost. The petitioner will be at liberty to withdraw the amount deposited with the Controlling Authority.

(Ms. R.M.Doshit, J.)

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